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MAILED

JAN 12 2009

TECHNOLOGY CENTER 2100

In re Application of: Fong, et al. :
Application No.: 09/440,645 :
Filed: November 16, 1999 : PETITION under 37 CFR §1.181
Attorney Docket #: 5244-0109-2 : TO RESET PERIOD FOR REPLY
Title: APPLICATION UNIT MONITORING :
AND REPORTING SYSTEM AND
METHOD WITH USAGE DATA
LOGGED INTO A MAP STRUCTURE

This is a decision on the petition filed on June 16, 2008, requesting that the shortened statutory period for reply set forth in the Office communication mailed on November 27, 2007 be reset to run from the date of status check on the Private Pair of April 15, 2008.

The petition is **DISMISSED**.

Petitioner provided a statement that the Office communication in question was not received and that the action (Examiner's Answer to Appeal Brief) was not present in the Image File Wrapper when the relevant "e-notification" was sent on November 27, 2007. In addition, Petitioner indicates that Applicant is a participant in the Office's Beta "e-Office Action Program".

Petitioner further indicates that the Examiner's Answer was not available for downloading on November 27, 2007 when the relevant "e-notification" was sent and that no courtesy post card reminder was sent for the Examiner's Answer. Finally, Petitioner states that they were made aware of the Office action via status check submitted on April 15, 2008. Note, a status letter is present in the file and was received by the Office on April 15, 2008.

In accordance with MPEP 710.06 (I):

The Office will grant a petition to restart the previously set period for reply to an Office action to run from the date of receipt of the Office action at the correspondence address when the following criteria are met:

- (A) the petition is filed within 2 weeks of the date of receipt of the Office action at the correspondence address;
- (B) a substantial portion of the set reply period had elapsed on the date of receipt (e.g., at least 1 month of a 2- or 3-month reply period had elapsed); and
- (C) the petition includes (1) evidence showing the date of receipt of the Office action at the correspondence address (e.g., a copy of the Office action having the date of receipt of the Office action at the correspondence address stamped

¹ See USPTO OG Notices: 26 June 2007.

thereon, a copy of the envelope (which contained the Office action) having the date of receipt of the Office action at the correspondence address stamped thereon, etc.), and (2) a statement setting forth the date of receipt of the Office action at the correspondence address and explaining how the evidence being presented establishes the date of receipt of the Office action at the correspondence address.

A review of the petition in the instant application confirms that the Office communication was viewed on Private PAIR on April 15, 2008. However, the instant petition was not filed with the Office until June 16, 2008, well outside the two weeks receipt date set forth above. In addition, no supporting evidence of either non and/or late receipt of the Office action has been submitted (i.e. docket reports, docketing department records, etc.). Finally, in that the instant Petition indicates that the Examiner's Answer to Appeal Brief was "not uploaded into PAIR until November 28, 2007 at 9:34 a.m." (confirmed by the Office's PALM system records), it is not entirely clear why, armed with this knowledge, a status check was not performed in the instant application until April 15, 2008.

Applicant's attention is directed to MPEP §711.03(c)(I)(A), which sets forth the requirements to withdraw the holding of abandonment based upon failure to receive an Office action.

Accordingly, The petition is **DISMISSED**.

At this time, the Reply Brief filed on June 16, 2008 has not been entered and is not considered to have been timely filed.

Any inquiry concerning this decision should be directed to Brian Johnson whose telephone is (571) 272-3595.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/440,645	11/16/1999	AVERY FONG	5244-0109-2	3214
22850	7590	01/13/2009		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
			EXAMINER CHANKONG, DOHM	
			ART UNIT 2452	PAPER NUMBER
			NOTIFICATION DATE 01/13/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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